



STATE BOARD OF EQUALIZATION

February 7, 1961

B--- M--- Company
XXXX East XXth Street
--- --- XX, Missouri

Attention: Mr. G--- E. H---, Jr.
Tax Department

Gentlemen:

We regret that our letter of January 24 did not sufficiently apprise you of the application of California sales tax to the sales of materials by California vendors to construction contractors for out-of-State use.

The thought we intended to convey was that contractors holding California sellers' permits may present exemption certificates as authorized in Section 6386 of the Sales and Use Tax Law and thereby cause the sale to be exempt from sales tax even though the contractor might take delivery of the property in this State.

If the contractor does not hold a California seller's permit, it is still possible that he could purchase the materials under a resale certificate by presenting information as to sellers' permits held by him in other states. The use of such a certificate is authorized only in those instances in which the contractor cannot at the time of purchase determine whether the property will be sold or incorporated into realty in the process of performing a construction contract. If the property is purchased for a particular job rather than for addition to an inventory, tax would apply. Even if the property is placed in inventory, said inventory must be of the type from which outright sales are made and from which withdrawals are made in connection with construction contracts.

If, as you state, Montana does not have a sales or use tax law, there is no possibility that a construction contractor would be defined as a retailer of the items used by him in the process of improving real property. Sales will, therefore, be taxable unless within the exemption mentioned

above or unless the out-of-State person's transfers, in fact, qualify as retail sales under the California Act even though they are not made in this State.

Very truly yours,

J. J. Delaney
Associate Tax Counsel

JJD:o'b

cc: Chicago – (CFH)